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In the Supreme Court of the United States

OCTOBER TERM, 1978

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO, PETITIONER

v.

COMPAGNIE NATIONALE AIR FRANCE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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This brief is filed in response to this Court's invitation of May 1, 1978.

QUESTION PRESENTED

The United States will discuss the question whether the termination of a collective bargaining agreement pursuant to a clause allowing the contract to be terminated if the National Mediation Board should take particular action creates a "representational dispute."

a "major dispute," a "minor dispute," or simply a disputed issue of law under the Railway Labor Act.

STATEMENT

A. The Railway Labor Act

The collective bargaining rights and obligations of air carriers and airline employees are governed by the Railway Labor Act, 44 Stat. 577, as amended, 45 U.S.C. 151-188. The Act provides for the settlement of disputes concerning rates of pay, rules or working conditions and of disputes growing out of the interpretation of agreements covering rates of pay, rules or working conditions. The Act also assures employees the right to organize and to bargain collectively through representatives of their own choosing. 45 U.S.C. 152 Fourth.

The majority of any "craft or class" of employees has the right to determine who shall be the collective bargaining representative of the craft or class (*ibid.*). If a dispute arises about who should represent a craft or class, the National Mediation Board resolves the dispute. 45 U.S.C. 152 Ninth. The carrier must "treat with" the representative certified by the Board (*ibid.*). *Virginian Ry.* v. *System Federation No. 40*, 300 U.S. 515, 547-548.

The Board determines what "crafts or classes" of employees may participate in representation elections. 45 U.S.C. 152 Ninth. *Switchmen's Union* v. *National Mediation Board*, 320 U.S. 297, 302-304. The railroad industry has established crafts or classes. The airline industry, however, does not have established

crafts or classes, and the Board has defined divisions based on the general functions (rather than the particular tasks) that employees perform. Airline employees performing cargo agent duties, such as respondent's cargo agents, have since 1947 been included in the overall "craft or class" of Clerical, Office, Fleet and Passenger Service Employees.

Although the Mediation Board is authorized only to certify a representative for an entire craft or class, the statute permits employers and labor unions to enter into collective bargaining agreements covering groups of employees constituting less than a craft or class. Carriers frequently recognize and negotiate with representatives of employee groups that constitute less than a craft or class when there is no certified representative for the entire craft or class.

Disputes arising out of a collective bargaining agreement may be resolved under the provisions of the Railway Labor Act. The functions of the Railroad Adjustment Board and the Mediation Board in resolving railway disputes were explained in *Elgin, Joliet & Eastern Ry.* v. *Burley*, 325 U.S. 711.[1] The

[1] The National Railroad Adjustment Board was created in the 1934 Amendments to the Railway Labor Act, 48 Stat. 1189, 45 U.S.C. 153. Congress subsequently authorized the National Mediation Board to establish a permanent National Air Transport Adjustment Board at its discretion. 49 Stat. 1190, 45 U.S.C. 185. The National Mediation Board has not done so, and airline industry grievances are handled by system, group or regional boards of adjustment. 45 U.S.C. 184. See *International Association of Machinists* v. *Central Airlines, Inc.*, 372 U.S. 682, 685-689.

Act distinguishes between two categories of labor disputes (325 U.S. at 723; footnote omitted):

> The first relates to disputes over the formation of collective agreements or efforts to secure them. They arise where there is no such agreement or where it is sought to change the terms of one, and therefore the issue is not whether an existing agreement controls the controversy. They look to the acquisition of rights for the future, not to assertion of rights claimed to have vested in the past.
>
> The second class, however, contemplates the existence of a collective agreement already concluded or, at any rate, a situation in which no effort is made to bring about a formal change in terms or to create a new one. The dispute relates either to the meaning or proper application of a particular provision with reference to a specific situation or to an omitted case. * * *
>
> In general the difference is between what are regarded traditionally as the major and the minor disputes of the railway labor world.

"Major disputes" involve "the large issues about which strikes ordinarily arise with the consequent interruptions of traffic the Act sought to avoid" (325 U.S. at 723-724). They are mediated under the auspices of the Mediation Board.[2] "Minor disputes" involve "the smaller differences which inevitably appear in the carrying out of major agreements and policies"

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[2] The procedures for the voluntary settlement of major disputes are described in *Brotherhood of Railroad Trainmen* v. *Jacksonville Terminal Co.*, 394 U.S. 369, 378.

and seldom produce strikes (*id.* at 724). They are resolved by the Adjustment Board. Any party may submit a dispute to the Adjustment Board for decision, whether or not the other is willing, provided that the submitting party has discharged the initial duty of negotiation (*id.* at 727).

B. The Present Controversy

For 25 years petitioner has represented respondent's cargo agents and lead cargo agents. The parties have entered into agreements covering rates of pay, rules and working conditions, and they have occasionally invoked the services of the Mediation Board to resolve disputes (Pet. 6). The most recent agreement was signed on January 3, 1977, and provides for automatic termination on September 30, 1979 (*ibid.*). Article XVII(q) of the agreement also provides (Pet. App. 10a-11a):

> Notwithstanding the "Effective Date and Duration" provisions of this Agreement and any references to the Railway Labor Act in this Agreement, if a decision of the National Mediation Board permits the certification of a representative of employees of any airline who perform functions analogous to those being performed by the employees covered by this Agreement in a group other than the class or craft of which the National Mediation Board has historically determined such employees to be a part, then this Agreement will terminate.

Respondent contends that this provision, which it drafted, was included because some of the employees

were interested in being represented by the International Brotherhood of Teamsters, and respondent did not desire to make a commitment to representation of the employees by petitioner for three years; moreover, the Mediation Board had docketed for consideration an application by the Air Line Employees Association (ALEA) seeking recognition of a new "craft or class" which would include cargo duties, thus indicating that the Board might recognize a craft or class analogous to respondent's cargo agents (J.A. 15a-22a).[3] If the Mediation Board were to recognize a new craft or class definition, respondent contended, it would become possible for its cargo employees to choose a new representative. Petitioner asserts, however, that the clause was "forced into the contract" by respondent and was accepted by petitioner only because its negotiator had been advised by petitioner's general counsel that "the clause was illegal and of no effect as it clearly violated the Railway Labor Act" (J.A. 152a-153a).

The proposed contract, including Article XVII(q), was accepted by petitioner, ratified by the employees, and signed on January 3, 1977 (J.A. 22a). The Mediation Board subsequently certified the ALEA as the bargaining representative of United Air Lines' passenger service employees (J.A. 185a-193a). Respondent immediately terminated the collective bargaining agreement, invoking Article XVII(q), and told petitioner that the company no longer would recognize

[3] "J.A." refers to the joint appendix in the court of appeals.

the union as the bargaining representative of the cargo agents (J.A. 195a). Respondent's cargo agents were notified of the termination of the agreement on the same day. At the company's request, they elected representatives to discuss working conditions with the company (J.A. 24a-25a). Although petitioner protested the termination, respondent continued to deal with the newly elected employee representatives (J.A. 27a).

On June 15, 1977, petitioner filed suit in the United States District Court for the Southern District of New York. The complaint sought an order compelling respondent to revive the collective bargaining agreement and to bargain with petitioner. Petitioner argued that respondent could not rely on Article XVII(q), because (a) the Mediation Board's ALEA decision applied to employees who performed work different from that of respondent's cargo agents, and (b) "[t]he purpose and intent of this clause is illegal and in violation of the Railway Labor Act" (J.A. 5a-6a).

The district court held that, insofar as petitioner requested the court to interpret Article XVII(q) to determine whether respondent's actions complied with the contract and the Railway Labor Act, the case presented a "minor dispute" that fell within the exclusive jurisdiction of the local System Board of Adjustment (Pet. App. 14a-20a). The court recognized that petitioner also challenged "the legality of Article XVII(q) of the contract in light of the RLA" (Pet. App. 21a), and observed that this branch of peti-

tioner's claim does not "depend upon an interpretation of the terms of the contract and is therefore not a minor dispute within the jurisdiction of the System Board of Adjustment" (*ibid.*). It reasoned, however, that because petitioner alleged that the clause was illegal as "a subterfuge intended to permit [respondent] to change the terms of the January 3 contract," this portion of the controversy is a "major dispute" within the exclusive jurisdiction of the Mediation Board (Pet. App. 21a-25a). The Court also stated that "the issue here is really one of representation, 'a subject which Congress has given the Mediation Board the duty to determine' " (*id.* at 27a).

The court of appeals affirmed the district court's decision to dismiss the complaint. It indicated, however, that it found no "major dispute" and that the case was properly treated as "a representational dispute" within the exclusive jurisdiction of the Mediation Board (Pet. App. 3a).

DISCUSSION

1. This case stems from a contract dispute. The gravamen of the complaint is that Article XVII(q), which authorized the termination of the contract, is illegal because it constitutes an attempt to evade the machinery established by statute for resolving labor disputes. The complaint did not ask the district court to "certify" a bargaining "representative" or to resolve "any dispute * * * among a carrier's employees as to who are the representatives of such employees"

(45 U.S.C. 152 Ninth). The complaint simply sought a determination whether a provision in a collective bargaining agreement that empowered the carrier to terminate the agreement based on its unilateral judgment without following the procedures prescribed by the Railway Labor Act was lawful. In these circumstances, we believe that the district court should not have dismissed the complaint.

It is settled that questions relating to the application or interpretation of collective bargaining agreements are "minor disputes" committed to the jurisdiction of the Railroad Adjustment Board or the System Boards of Adjustment. See *Andrews* v. *Louisville & Nashville R.R.*, 406 U.S. 320, 324; *Order of Railway Conductors* v. *Pitney*, 326 U.S. 561, 566-568. Therefore, if the sole question here were whether the Mediation Board's certification of United Air Lines passenger service personnel allowed respondent to exercise its rights under Article XVII(q) of the contract, this case would involve a "minor dispute." A System Board of Adjustment is peculiarly qualified to resolve questions of the interpretation of collective bargaining agreements. *Order of Railway Conductors* v. *Pitney*, *supra*, 326 U.S. at 567.

But because petitioner's initial argument is that Article XVII(q) is invalid, the district court was presented with a legal question at the threshold. It would be pointless for the Adjustment Board to construe an invalid clause, and the district court correctly held that the claim of illegality does not require "an interpretation of the terms of the contract and is

therefore not a minor dispute" (Pet. App. 21a). It does not follow, however, that a dispute is "major" or "representational" just because the dispute is not "minor."

"Major disputes" subject to the jurisdiction of the Mediation Board arise "where there is no [collective bargaining] agreement or where it is sought to change the terms of one, and therefore the issue is not whether an existing agreement controls the controversy." *Elgin, Joliet & Eastern Ry.* v. *Burley*, 325 U.S. 711, 723. See also *Detroit & Toledo Shore Line R.R.* v. *United Transportation Union*, 396 U.S. 142, 148-149. Petitioner argues here that part of the agreement is illegal under the federal statute; there is no dispute about the consummation of an agreement or its renegotiation, and therefore there is no "major dispute." The court of appeals thus properly disagreed with the district court's conclusion that the dispute is "major." The court of appeals itself erred, however, in finding the controversy to be a "representational dispute."

"Representational disputes," which occur when a union seeks to be certified as the representative of a "craft or class" of employees under the procedures set forth in Section 2 Ninth (45 U.S.C. 152 Ninth), are within the exclusive jurisdiction of the Mediation Board. *Switchmen's Union* v. *National Mediation Board*, 320 U.S. 297, 302-307; *Brotherhood of Railway and Steamship Clerks* v. *Association for the Benefit of Non-Contract Employees*, 380 U.S. 650, 658-660. But neither petitioner nor anyone else seeks

to be certified as the representative of respondent's cargo agents, and there is no dispute among competing groups seeking representative status to be settled by the Mediation Board. The dispute therefore cannot be a "representational dispute."

Because the controversy is not "major," "minor," or "representational," it is not within the mandatory authority of the Mediation Board or an Adjustment Board. The district courts should resolve threshold legal issues in controversies such as the present one. In *Felter* v. *Southern Pacific Co.*, 359 U.S. 326, 327-328 n. 3, which adjudicated the legality of a dues "checkoff" provision, this Court stated:

> Since there was no question of interpretation or application of the collective agreement, but rather only one of its validity under the statute, the case is not one in which resort to the grievance and Adjustment Board machinery provided by the Railway Labor Act was required. "This dispute involves the validity of the contract, not its meaning."

See also *Brotherhood of Railroad Trainmen* v. *Howard*, 343 U.S. 768, 774, holding that plaintiffs must look to "a judicial remedy" when challenging the legal validity of a collective bargaining agreement under the Railway Labor Act. And see *Seaboard World Airlines, Inc.* v. *Transport Workers Unions*, 425 F.2d 1086 (C.A. 2), which involved a provision limiting the renegotiation of a collective bargaining contract. The court held there that (425 F.2d at 1091): "[T]he question of the legality of the long prohibition on reopening in the contract between Seaboard and the

Union is important and should be determined in the first instance by the district court." [4]

Petitioner's complaint raised a colorable legal issue concerning the validity of Article XVII(q). Whether or not petitioner is right—and we express no opinion on that question—its arguments certainly were not so palpably wrong that the court had no jurisdiction to pass on them.[5] If the clause should be found to be unlawful, the district court could order respondent to adhere to the agreement and to make petitioner whole. If the clause should be found to be lawful, the district court could enter a declaratory judgment to that effect and remit the parties to an Adjustment

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[4] See also *Japan Air Lines Co.* v. *International Association of Machinists*, 538 F.2d 46 (C.A. 2), resolving a dispute about the legality of a contract agreement under the Railway Labor Act. And in *Haley* v. *Childers*, 314 F.2d 610, 615 (C.A. 8), the court summarized the applicable rule (citations omitted):

> "If the controversy involves the validity of the contract under the guarantees of the Railway Labor Act, the court has jurisdiction to grant the relief. If the issues can be determined by an interpretation of the bargaining agreement, exclusive jurisdiction is vested in the Railroad Adjustment Board."

[5] The statute creates an obligation "to exert every reasonable effort to make and maintain agreements" (*Chicago & North Western Ry.* v. *United Transportation Union*, 402 U.S. 570, 579-581), and Article XVII(q) arguably is a default on that obligation. Moreover, respondent's exercise of its right to terminate the contract arguably violated the requirement that pay, rules and working conditions not be changed without the notice required by Section 6 of the Act, 45 U.S.C. 156.

Board for the resolution of what would then be a "minor dispute"—the question whether the Mediation Board's decision in the AELA-United Air Lines case authorized respondent to invoke Article XVII(q) and terminate the collective bargaining agreement. See *Order of Railway Conductors* v. *Pitney*, *supra*, 326 U.S. at 568. The complaint therefore should not have been dismissed.

2. Although we agree with petitioner that the lower courts erred, we do not believe that review by this Court is appropriate.

First, the decision here does not conflict with *Burlington Northern, Inc.* v. *American Railway Supervisors Association*, 503 F.2d 58 (C.A. 7), certiorari denied, 421 U.S. 975. *Burlington Northern* involved, as the court of appeals pointed out (Pet. App. 2a), the enforcement of a provision that was part of an agreement that had been approved by the Interstate Commerce Commission. There was no dispute in that case about the validity or interpretation of a clause resembling that involved here.

Second, petitioner is incorrect in asserting (Pet. 10-11) that the case presents the question "whether a voluntary agreement which recognizes [a] collective bargaining representative of less than a class or craft unit" (Pet. 10) is lawful. No question of legality has been resolved by the lower courts; the dispute to this point has been about whether the courts would decide the case on its merits. Petitioner asserts that respondent "raised the issue" (Pet. 10) in the court

of appeals; even if this is accurate (which respondent denies (Br. in Opp. 8)), the court of appeals did not resolve that question, nor could it have done so in light of the district court's disposition of the case.

Third, the case appears to be unique. The parties have not drawn to the Court's attention any other collective bargaining agreement containing a clause similar to Article XVII(q), and we are aware of none. The district court's opinion, and the court of appeals' unpublished affirmance, therefore will have little if any precedential effect. The basic principles concerning the allocation of responsibility among the administrative agencies and courts have been established by this Court in *Felter*, *Elgin*, *Pitney* and other cases; the present case involves no more than their application to an unusual dispute. Thus, although, for the reasons stated above, we believe that the threshold legal question should have been resolved by the district court, we do not believe that it is necessary for this Court to grant review.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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